MOHD NOOR OTHMAN & ORS.

v.

HJ. MOHD ISMAIL HJ. IBRAHIM & ORS. & ANOTHER CASE

SUPREME COURT, KUALA LUMPUR
ABDUL HAMID OMAR ACTING LP
LEE HUN HOE CJ (BORNEO)
HASHIM YEOP SANI SCJ
MOHD. YUSOFF MOHAMED J
GUNN CHIT TUAN J
[CIVIL APPEAL NO. 51 OF 1988]
9 AUGUST 1988

UNINCORPORATED ASSOCIATIONS: *Interpretation of s. 12(3) and s. 41(c) Societies Act 1966 - When UMNO became unlawful - Upon the establishment of the 30 unlawful branches - Issuing of declaration discretionary - No proper or lawful recipient - Rights founded on something unlawful - Court intervenes only for a limited purpose.*

The appellants as plaintiffs in the Court below asked for a number of declarations but the main declarations sought were:

(a) The election of the office-bearers at the general assembly on 24 April 1987 was unconstitutional, illegal, null and void and of no effect because of the existence of delegates from 30 unapproved branches in 4 divisions which had elected delegates or sent observers to the Division conferences which in turn elected the delegates to the general assembly on 24 April 1987; and

(b) A consequential declaration that the previous elected office-bearers of UMNO Malaysia at the 37th UMNO Malaysia general assembly still exists in law with all the powers subscribed to them until expiration of their full term or upon fresh UMNO general assembly and election being taken on a date to be fixed in accordance with the UMNO Constitution.

The learned Judge dismissed the claims on 4 February 1988 despite making the finding that the elected office-bearers should continue to be the lawful office-bearers in UMNO.

Held:

[1] Even though the learned Judge was correct in concluding that UMNO was unlawful as a result of the existence of the unlawful branches, his additional finding that the elected office-bearers would continue to be the lawful office-bearers in UMNO is a finding which cannot be supported by law and unwarranted by the evidence. The finding should be set aside.

[2] The effect of s. 12(2) and s. 41(c) read together is that UMNO became unlawful when the first of the 30 unlawful branches was established. Therefore there could not legally or lawfully be a set of office-bearers of a political party which had became unlawful by operation of law.

[3] Issuing of a declaration is discretionary and only done where the circumstances justify it. Parties appearing before the Court are not the lawful or proper recipients. Further, UMNO being declared unlawful, no member can acquire any right founded on that which is unlawful.

[Appeal dismissed. Affirming the order of Judge on the costs in the Court below as regards the cross-appeal on costs. Appellants pay to cost of appeal.]

Cases referred to:
Chong Kok Lim & Ors. v. Yong Su Hian [1979] 2 MLJ 11
Ibeneweka v. Egbuna [1964] 1 WLR 49
Dato Menteri Othman bin Baginda & Anor. v. Dato Ombi Syed Alwi [1981] 1 MLJ 29
Soh Hood Beng v. Khoo Chye Neo [1896] 4 SSLR 115
Tharmalingam v. Sambanthan [1961] MLJ 63
Vethanayagam v. Karuppiah [1968] 1 MLJ 283, [1969] 1 MLJ 146

Legislation referred to:
Societies Act 1966, ss. 12(3), 41(c), 42-47

For the appellants - YM Raja Aziz Addruse (Muhammad Shafee Abdullah & Christina Kow with him), M/s. Shafee & Co.
For the 1st, 2nd, 4th, 5th & 7th respondents - Zaki Tun Azmi (Juliana Soloman & WW Cheong with him) M/s. Rashid & Lee
For the 3rd respondent - H S Lim; M/s. H S Lim, Teo & Partners
For the 6th respondent - K Ghandisingha; M/s. Zuki, Ghandhi & Amin

JUDGMENT

Hashim Yeop Sani SCJ:

The basic issue in this appeal is the issue of illegality and the question to be answered is what is the proper interpretation of s. 12(3) and s. 41(c) of the Societies Act 1966 ("the Act") and how is it to be applied to the agreed facts.

Among the agreed facts the most important for the purpose of determining the appeal is fact (d) at p. 15 and recorded in the grounds of judgment of the learned Judge as follows:

> There were 30 unapproved Branches in 4 Divisions which held their Annual General Meetings and elected delegates or sent observers to the Division Conferences which in turn elected delegates to the General Assembly on 24 April 1987.

We will first deal with the interpretation and effect of s. 12(3) and s. 41(c) of the Act. Section 12(3) reads as follows:

> Where a registered society established a branch without the prior approval of the Registrar such registered society and the branch so established shall be deemed to be unlawful societies:
>
> Provided that a branch of a registered society established and in existence immediately before the commencement of this Act shall not be deemed to be an unlawful society if within six months from the commencement of this Act or such extended period, not being more than three months, as the Registrar may allow, such registered society applies to the Registrar in writing for his approval under this section; and in considering such application the Registrar shall have all the powers conferred upon him by sub-section (2).
> (This proviso does not concern us).

Before 10 June 1988 when it was amended by Act A700/88, s. 41(c) read:

> 41. For the purposes of this Act any of the following societies shall be an unlawful society, that is to say:
>
> (a) ...
>
> (b) ...
>
> (c) a society which establishes a branch without the prior approval of the Registrar in contravention of s. 12 and the branch so established; or

The appellants as plaintiffs in the Court below asked for a number of declarations but the main declarations sought were:

(a) the election of the office-bearers at the general assembly on 24 April 1987 was unconstitutional, illegal, null and void and of no effect because of the existence of delegates from 30 unapproved branches in 4 divisions which had elected delegates or sent observers to the division conferences which in turn elected the delegates to the general assembly on 24 April 1987; and

(b) a consequential declaration that the previous elected office-bearers of UMNO Malaysia general assembly still exists in law with all the powers subscribed to them until expiration of their full term or upon fresh UMNO general assembly and election being taken on a date to be fixed in accordance with the UMNO constitution.

In his oral judgment on 4 February 1988 the learned Judge dismissed the claims which means that he refused all the declarations sought. His reasons for refusing the declarations appear towards the end of his oral judgment at p. 10 of the appeal record, i.e.

> because UMNO is still an unlawful society, the plaintiffs cannot now seek the aid of the Court for the grant of the reliefs.

However, in his grounds of decision more than two months later, dated 13 April 1988, the learned Judge made a finding relating to the 1984 office-bearers recorded at p. 25 of the appeal record as follows:

> In my judgment as UMNO was an unlawful society at the material time, persons who took part in the elections in 1987 at branch, division and the general assembly levels committed an offence (s. 43 of the Act) and therefore the elections were null and void and the office-bearers elected at all levels were not office-bearers at all.
>
> The entire series of elections were a nullity all the way. **It follows that the office-bearers elected at the 37th general assembly in 1984 continue to be the lawful office-bearers of UMNO.**
> *(note emphasis)*

Under the heading "Remedies" in his grounds of decision the learned Judge said:

> It follows that UMNO is still an unlawful society. That being so, the plaintiffs as members of UMNO cannot acquire any right which is founded upon that which is unlawful. The Court will therefore not lend its aid to the reliefs sought by the plaintiffs. Having said that, I do not think it is necessary to deal with the other issues and I accordingly dismissed the plaintiff's claim;

Thus despite making the finding on the 1984 office-bearers the correctness or otherwise of which we will deal with later the Judge still refused the declarations in his grounds of decision.

The learned Judge regarded the interpretation of the statutory provisions concerned as clear and unambiguous.

He said at pp. 24-25:

> The provisions of ss. 12(3) and 41(c) are clear and unambiguous and it will do violence to the language of the statute if only the unapproved branches are declared by the Act to be unlawful societies but the parent body is not.

We have no hesitation in saying that we are in total agreement with the construction given by the learned Judge. For it is trite law that where the words of a statue are clear there is no room for the Court to go beyond the expressed language of the statute.

In our view the learned Judge was absolutely correct in his interpretation of s. 12(3) and s. 41(c) of the Act both in his oral judgment and his grounds of decision. The learned Judge was also correct in his conclusion that as a result of the existence of the unlawful branches the main body (UMNO) was also rendered unlawful by the statute. However with due respect to the learned Judge, he failed in his grounds of decision to carry the interpretation to its logical conclusion. As a result his additional finding in the grounds of decision (referred to by the respondents as "obiter") to the effect that the office-bearers elected at the 37th general assembly in 1984 would continue to be the lawful office-bearers of UMNO is in our view a finding which cannot be supported by law and unwarranted by the evidence.

The UMNO whose constitution is found at pp. 199-303 of the appeal record became unlawful not when the learned Judge delivered his oral judgment but long before that (date unknown) when the first of the 30 unlawful branches was established. That in fact is the effect of s. 12(3) and s. 41(c) of the Act. There was a lot of quibbling on the word "establish" is s. 12. But in our view s. 12(3) and s. 41(c) of the Act read together simply mean that a society which has a branch which was established without the prior approval of the Registrar shall be an unlawful society. There could not legally or lawfully be a set of office-bearers of a political party which had become unlawful by operation of law. Indeed, as the learned Judge correctly observed ss. 42 to 47 of the Act prescribe offences relating to an unlawful society; and s. 43 in particular makes it an offence for any person to attend a meeting of an unlawful society and any person who gives money or any aid to or for the benefit of an unlawful society commits an offence.

The learned Judge did not grant any declarations in his oral judgment nor in his grounds of decision. Indeed as a matter of principle, in matters concerning private societies and associations including political parties the Court will intervene only for the limited purpose of protecting a proprietary right or interest of the members or where there is a complaint of a breach of the rules of natural justice by a member or the society or association. See *Chong Kok Lim & Ors. v. Yong Su Hian* [1979] 2 MLJ 11.

It is also an established principle consistently followed by our Courts that the issuing of a declaration is discretionary. The power to issue a declaration should be exercised with circumspection with a proper sense of responsibility and ought not to be exercised unless the circumstances justify it. See also the speech of Viscount Radcliffe in the Privy Council in *Ibeneweka v. Egbuna* [1964] 1 WLR 219 and *Dato Menteri Othman bin Baginda & Anor. v. Dato Ombi Syed Alwi* [1981] 1 MLJ 29.

More importantly before a Court makes a declaration there must be persons or body as the proper or lawful recipient of the benefits of the declaration. The Court does not act in vain.

Here the UMNO whose constitution appears at pp. 199-303 has been rendered unlawful by the operation of a statute. The principles which should be applied have already been settled a long time ago. See *Soh Hood Beng v. Khoo Chye Neo* [1896] 4 SSLR 115, *Tharmalingam v. Sambanthan* [1961] MLJ 63 and *Vethanayagam v. Karuppiah* [1968] 1 MLJ 283, [1969] 1 MLJ 146.

The parties who appeared before the learned Judge in the instant case neither appeared as members or officials of a lawful society nor as persons otherwise having any rights or interests which can be recognised by the Court. UMNO was unlawful by operation of law and being unlawful no member can acquire any right which is founded on that which is declared by law to be unlawful. The learned Judge could have struck out their suit in limine. Therefore the Judge cannot be said to be wrong in not granting any declaration and dismissing the claims of the plaintiffs.

Our conclusions in this appeal are as follows:

(1) The appeal should be dismissed.

(2) As regards the cross-appeal we agree that the finding of the learned Judge in his grounds of decision relating to the 1984 office-bearers is wrong in law and should be set aside.

(3) As regards the cross-appeal on costs we affirm the order of the learned Judge on costs in the Court below but order the appellants to pay the cost of this appeal.

Order accordingly.

Also found at [1988] 2 CLJ 597